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Approved For Release 2003/04/02 : CIA-RDP78-01092A000100070018-4

14 FEB 1975

MEMORANDUM FOR: Chief, [REDACTED] DD/O

SUBJECT : U.S. v. IBM

REFERENCE : Intelligence Information Report [REDACTED]

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1. As a sequel to our first discussion of the subject suit, I am forwarding a copy of the referent for your studied review.

2. I share your concern that this report, which I understand was prepared from information supplied by [REDACTED] should be made available to IBM.

3. The background to this situation is that in 1969 Justice filed an anti-trust suit against IBM alleging violations of the Sherman Act in that it had monopolized the marketing of general purpose digital computers. During the past 6 years of pre-trial proceedings this Agency, as well as a number of other Government agencies, has been subjected to an extensive discovery of documents considered by IBM to have some relevance to this litigation. The authority for IBM's wide-ranging discovery activities has been the pre-trial orders issued by Chief Judge Edelstein of the U.S. District Court for the Southern District of New York. In addition to orders requiring the production of documents, Edelstein has also issued a Protective Order which concerns information that is: (1) sensitive, commercial, or proprietary or (2) classified. In terms of the Order, IBM may use Government-furnished, sensitive, commercial, or proprietary information only for purposes of the present suit, and access to classified information is to be restricted to those of its representatives who possess the requisite security clearances. In response to the various pre-trial orders and in keeping with the Protective Order, this Agency has heretofore released classified materials to IBM. In certain cases the documents were sanitized after the full text had been read by its cleared personnel.

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4. I am concerned that the Agency would withhold the referent because if IBM should complain to Edelstein we will find ourselves in an extremely unfortunate position. The basis for this observation is the experience suffered by the Department of Commerce last summer when it sought to withhold the production of documents on the grounds of statutory privilege or security classification. In the final analysis, they were forced to relent in the face of Edelstein's threat to hold the Secretary of Commerce in contempt and dismiss the Government's case.

5. Given Commerce's experience, I could not advise the DCI that he might successfully resist producing the referent upon invoking his statutory responsibilities for protecting sources and methods. Edelstein's temperament is such that he is not disposed to permit any statute, including the National Security Act, to interfere with his preconceived notions of regularized judicial procedure.

6. Accordingly, I ask that you reconsider your initial decision that the referent may not be released. As I explained, this Agency document, among others, was found by IBM in its search of Commerce's files. Justice has requested that we authorize its release for filing in accordance with the Protective Order.


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Associate General Counsel

Att

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